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3/7/04

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Examiner : Gregory Strimbu  
Art Unit : 3634  
Applicants : Philip O. Gerard  
Serial No. : 10/042,738  
Filing Date : May 24, 2002  
For : WINDOW FRAME WITH BOTH TEMPORARY AND  
PERMANENT CONNECTIONS

Mail Stop Appeal Brief - Patents  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

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**GROUP 3600**

TRANSMITTAL OF APPEAL BRIEF

Enclosed in triplicate is the Appeal Brief in the above identified application  
following the Notice of Appeal filed January 15, 2004.

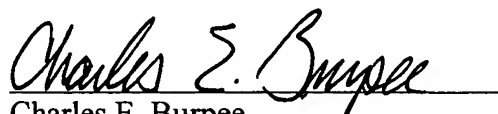
A check in the amount of \$330.00 is enclosed to cover the fee for filing the  
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Respectfully submitted,

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CERTIFICATE OF MAILING

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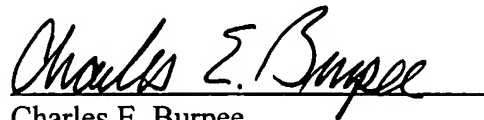
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APPEAL BRIEF

This is an appeal from a final rejection of claims 1, 3-7, and 9-19 by Examiner Strimbu.

I. Real Party In Interest

The real party in interest is ODL, Incorporated, 215 East Roosevelt Avenue, Zeeland, Michigan 49464.

II. Related Appeals and Interferences

There are no related appeals or interferences known to Appellant, Appellant's legal representative, or Appellant's assignee which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

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### III. Status of Claims

Claims 1, 3-7, and 9-19 are pending and finally rejected. Applicant appeals with respect to claims 1, 3-7, and 9-17 and not with respect to claims 18-19. Claims 2 and 8 are canceled.

### IV. Status of Amendments

No amendment was filed subsequent to the final rejection.

### V. Summary of the Invention

#### A. Background

Window assemblies, such as doorlights, are widely popular. These assemblies include a frame and a glazing panel (such as an insulated glass) supported by the frame. The frame typically includes two frame halves – one exterior and one interior – that are screwed together or otherwise interconnected. The frame halves are positioned on opposite sides of an object, such as a door, to support the glazing panel within an opening.

These window/doorlight assemblies can be relatively time-consuming to install. The doorlight assembly is fabricated at a first location by a doorlight manufacturer. More specifically, the glazing panel is positioned between the two frame halves, and the fasteners are installed in the frame halves in order to hold the assembly together. The assembly then is

shipped to a second location for installation within a door. When the assembly arrives at the second location, the fasteners must be removed from the frame halves; the frame halves must be separated; the frame halves must be repositioned on opposite sides of the door; and the fasteners must be reinstalled in the frame halves. Given that a typical frame may include fourteen or more screws or fasteners, a considerable amount of time is required to install the window assembly in the door. Further, such doorlight frames have aesthetic issues because the screw holes and the heads of the screws within the holes are visible on the installed frame. Although the holes can be filled with putty or screw hole covers, these techniques require additional time; and the aesthetic results vary with the skill of the installer.

Some doorlight frames have been developed that include fasteners that are not threaded. Unfortunately, the fasteners are designed for permanent installation and therefore can be used only when the window/doorlight is to be permanently installed. The fasteners cannot be installed during doorlight fabrication (prior to shipment) because the frame halves could not be subsequently separated to install the door light within a door. Consequently, a separate additional fastening system (e.g. banding) must be used to hold the door light assembly together prior to installation.

#### B. The Invention

As defined in independent claims 1 and 8, the present invention is a window assembly with a frame that includes two connector systems or means – a first (pins 20 and sockets 22) for temporarily interconnecting the two frame halves during shipment, and a second

(barbs 30 and receivers 32) for permanently interconnecting the frame halves during installation. The two frame halves can be oriented relative to one another in either a “ship” orientation (Fig. 5) or an “install” orientation (Fig. 6). The frame halves can be shifted between the two orientations by rotating the second frame half within its own plane. The second (i.e. permanent) connector system is active only when the frame halves are in the “install” orientation. See Fig. 6 (the “install” orientation) in which the barbs 30 and the receivers 32 are interlocked. See also Fig. 5 (the “ship” orientation) in which the barbs 30 and receivers 32 are not aligned.

Further, both of the first and second connector systems are integral with the frame halves. Claim 1 requires the connector means to be “integral with” the frame halves. Claim 7 requires the connector means to be “unitary with” the frame halves. Separate fasteners – either threaded or unthreaded – are not required, simplifying and reducing the cost of both the manufacturing step and the installation step.

Claim 13 approaches the invention somewhat differently. Claim 13 requires (a) a first frame half including a plurality of barbs monolithically formed with the first frame half, (b) a second frame half including a plurality of receivers monolithically formed with the second frame half, (c) the second frame half having a ship orientation and an install orientation with respect to the first frame half, and (d) the receivers receiving the barbs only when the second frame half is in the install orientation. Claim 13 does not recite a second connector system.

During manufacture of a window assembly, the frame halves are oriented in the “ship” position (with a glazing panel therebetween), whereupon the first connection system releasably interconnects the frame halves. Because the first connection system is integral with

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the frame halves, there is no need for separate connectors. At the installation location, the two frame halves can be separated and reoriented in the install orientation, whereupon the second connection system securely or essentially permanently connects the frame halves.

#### VI. Issues

A. Whether claims 1, 3-7, and 9-12 are patentable under 35 U.S.C. 102(b) over U.S. Patent 5,570,548 to Hopper.

B. Whether claims 13-17 are patentable under 35 U.S.C. 103(a) over U.S. Patent 5,570,548 to Hopper in view of U.S. Patent 6,272,801 to Suh.

#### VII. Grouping of Claims

Each ground of rejection applies to a single group of claims, and the claims within each group stand or fall together as a group.

#### VIII. Argument

The rejections of claims 1, 3-7, and 9-17 under 35 U.S.C. 102(b) and 35 U.S.C. 103 are improper and should be reversed.

A. Claims 1, 3-7, and 9-12 Are Not Anticipated by U.S. Patent 5,570,548 to Hopper

Claims 1, 3-7, and 9-12 are rejected under 35 U.S.C. 102(b) as being anticipated

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by U.S. Patent 5,570,548 to Hopper.

Hopper discloses a window sash and an associated method of making a window sash. First, four extrusions that all are identical in cross sections are joined together to create a rectangular frame pre-form as shown in Fig. 2. Second, the frame pre-form is cut in half longitudinally along the line A in Fig. 5 to create two frame halves. Third, a glazing panel is positioned between the two halves. Finally, the two frame halves are permanently interconnected using a separate H-shaped connector or extrusion.

Anticipation can only be established by a single prior art reference that identically discloses each and every element of the claimed invention. Anticipation is not shown even if the differences between the claims and the prior art reference are insubstantial. Instead, the reference must show exactly what is claimed. In re Bond, 910 F.2d 831, 15 U.S.P.Q. 2d 1566 (Fed. Cir. 1990); Structural Rubber Prod. Co. v. Park Rubber Co., 749 F.2d 707, 223 U.S.P.Q. 1264 (Fed. Cir. 1984).

Hopper completely fails to disclose or teach several of the concepts recited in independent claims 1 and 7. First, Hopper does not disclose two frame halves having “ship” and “install” orientations in which one of the frame halves is rotated within its own plane between the two orientations. Second, Hopper does not disclose two connection means – a first for releasably connecting the frame halves, and a second for securely or essentially permanently connecting the frame halves *only* when the frame halves are in the install orientation. Third, Hopper does not disclose connection means or systems that are “integral” or “unitary” with the frame halves, eliminating the need for separate connectors.



The Examiner asserts that Hopper discloses a ship orientation that is “not shown, but comprising the condition where only one of the barbs of the first means 35 engages only one of the barbs of the connector 80”. First, this “orientation” is not disclosed or taught by Hopper. This orientation is only a hindsight fabrication. Second, this assertion ignores the claim requirements that one of the frame halves be moved between the ship orientation and the install orientation by rotating the frame half within its own plane. The Examiner’s asserted orientation is in actuality an intermediate and transitory stage of assembly. It is meaningless within the context of the present invention. In reality, Hopper suggests only one “orientation” in which the two sash frame halves are permanently interconnected.

The Examiner asserts (a) that the first barb on each of the barbed flanges 35 and 38 is the first connector means for releasably interconnecting the frame halves and (b) that the second barb on each of the barbed flanges 35 and 38 is the second connector means for securely interconnecting the frame halves only when the frame halves are in the install orientation. This interpretation is incorrect and indeed is contrary to the teaching of Hopper. Barbed flanges 35 and 38 are parts of a *single* connection system that also includes the separate H-shaped connector 80 (which interfits with both of the flanges). The single Hopper connection system securely or essentially permanently interconnects the frame halves. There is no “second” connection system for releasably interconnecting the frame halves. Further, the alleged second connector means in Hopper interconnects the frame halves when they are in either of the asserted orientations. This is directly contrary to claims 1 and 7, which require the second connector means to interconnect the frames only in one of the orientations.

Finally, Appellant points out that the single connection system of Hopper is not integral or unitary with the frame halves. Quite to the contrary, the single connection system requires the separate H-shaped connector, which interfits with all of the various barbs.

Since Hopper fails to disclose or teach several of the elements of the claimed invention, the rejection under 35 U.S.C. 102(b) is improper and should be reversed.

B. Claims 13-17 Are Not Obvious Over U.S. Patent 5,570,548 to Hopper in View of U.S. Patent 6,272,801 to Suh.

Claims 13-17 were rejected under 35 U.S.C. 103(a) as being unpatentable over Hopper in view of U.S. Patent 6,272,801 to Suh.

The examiner states that "Claims 13-17 are rejected as being unpatentable over Hopper as applied to claims 1, 3-7, 9-12, 18, and 19, [which are unrelated claims] and further in view of Suh." The Examiner's application of Hopper in rejecting unrelated claims is not of assistance in understanding the rejection of claims 13-17.

Turning to the merits of the rejection as best understood, Hopper does not disclose 1) a first frame half with barbs monolithically formed with the first frame half and a second frame half with receivers monolithically formed with the second frame half, 2) the second frame half movable between ship and install orientations with respect to a first frame half by rotating the second frame half within its plane, or 3) the receivers receiving the barbs only when the second frame half is in the install orientation. In short, Hopper's shortcomings with respect to claim independent claim 13 are quite similar to Hopper's shortcomings with respect to

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independent claims 1 and 7 discussed above.

Suh is cited only for its disclosure of frame halves having monolithically formed barbs and receivers. Suh does not in any way supplement the noted inadequacies of Hopper. In fact, Suh suffers from the very disadvantages that the present invention is intended to overcome. Suh does not disclose 1) frame halves having ship and install orientations or 2) the receivers receiving the barbs only when the frame halves are in the install orientation. In short, Suh fails to supplement the inadequacies of Hopper.

Claim 13 is patentable over any hypothetical combination of Hopper and Suh. Neither reference discloses essential components of the claim. And therefore any hypothetical combination of the references also fails to disclose or suggest essential components of the claims. Therefore the rejection is unfounded and must be withdrawn.

IX. Appendix

1. A window frame comprising:  
a first frame half;  
a second frame half having a ship orientation and an install orientation with respect to said first frame half, said second frame half being moved between the ship and install orientations by rotating said second frame half within its own plane;  
first connector means for releasably interconnecting said first and second frame halves when said second frame half is in the ship orientation, said first connector means being integral with said first and second frame halves; and  
second connector means for securely interconnecting said first and second frame halves only when said second frame half is in the install orientation, said second connector means also being integral with said first and second frame halves.
3. A window frame as described in claim 1 wherein said first and second frame halves are identical to one another.
4. A window frame as defined in claim 1 wherein said second connector means includes a barb and a keeper.
5. A window frame as defined in claim 4 wherein said barb and said keeper are capable of interlocking at a plurality of relative axial positions.
6. A window frame as defined in claim 1 wherein said first connector means includes friction fitting components.
7. A window frame comprising:

a first frame half;

a second frame half including a ship orientation and an install orientation with respect to said first frame half, said second frame half being moved between the ship orientation and the install orientation by turning said second frame half within its own plane;

first connector means unitary with said first and second frame halves for releasably interconnecting said first and second frame halves; and

second connector means unitary with said first and second frame halves for securely interconnecting said first and second frame halves, said second connector means operative only when said second frame half is in the install orientation.

9. A window frame as defined in claim 7 wherein said first and second frame halves are identical to one another.

10. A window frame as defined in claim 7 wherein said second connector means includes a barb and a keeper.

11. A window frame as defined in claim 7 wherein said barb and said keeper are capable of interlocking at a plurality of relative axial positions.

12. A window frame as defined in claim 7 wherein said first connector means includes friction fitting components.

13. A window frame comprising:

a first frame half including a plurality of barbs monolithically formed with said first frame half; and

a second frame half including a plurality of receivers monolithically formed with

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said second frame half, said second frame half having both a ship orientation and an install orientation with respect to said first frame half, said second frame half being moved between the ship and install orientations by rotating said second frame half within its own plane, each of said receivers receiving one of said barbs only when said second frame half is in the install orientation to securely interconnect said first and second frame halves.

14. A window frame as defined in claim 13 wherein said barbs and receivers are capable of interlocking at a plurality of relative axial positions.

15. A window frame as defined in claim 13 further comprising first connector means for releasably interconnecting said first and second frame halves in both said ship orientation and said install orientation.

16. A window frame as defined in claim 15 wherein said first connector means is integrally formed with at least one of said first and second frame halves.

17. A window frame as defined in claim 13 wherein said first and second frame halves are identical to one another.

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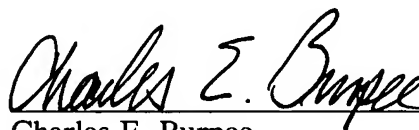
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In summary, the Examiners' rejections under 35 U.S.C. 102(b) and 35 U.S.C. 103(a) are improper and should be reversed.

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